

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Elena Lev Polukhin,

Petitioner,

v.

United States of America,

Respondent.

ORDER DISMISSING CASE
Civil No. 20-1244 ADM/BRT

Andrew S. Feldman, Esq., Feldman Firm PLLC, Miami, FL, and Marc Prokosch, Esq., Marc Prokosch Law LLC, Roseville, MN, on behalf of Petitioner.

Michael L. Cheever, Assistant United States Attorney, Minneapolis, MN, on behalf of Respondent.

This matter is before the undersigned United States District Judge for a ruling on Respondent United States of America's (the "Government") Amended Motion to Set Aside Default, to Dismiss Civil Case, and for an Order to Show Cause [Docket No. 14].¹ The Government argues Petitioner Elena Lev Polukhin ("Polukhin") improperly filed her Petition for Writ of Coram Nobis [Docket No. 1] as a civil proceeding, rather than filing the Petition in the criminal case of United States v. Polukhin, No. 15-cr-261 ADM/BRT (D. Minn.). The Government contends that the Clerk's Entry of Default [Docket No. 10] should be set aside and the case should be dismissed.

The Government also argues that Polukhin's counsel should have been aware that Polukhin could not obtain the extraordinary relief of nullifying her criminal conviction by

¹ The Amended Motion was filed to correct a citation in the Government's initial Motion to Set Aside Default [Docket No. 11]. The initial Motion cited to Rule 11(c)(2) of the Federal Rule of Civil Procedure, rather than Rule 11(c)(3).

merely obtaining a default judgment. The Government requests the Court to issue an order to show cause under Federal Rule of Civil Procedure 11(c) explaining why Polukhin and her attorneys should not be sanctioned in this case.

After receiving the Government's Motion, Polukhin's counsel conducted additional research and recognized the Petition was filed in error as a civil proceeding. Polukhin filed a Notice of Dismissal [Docket No. 13] two days after the Government's Motion was filed. Under these circumstances, the Clerk's Entry of Default will be vacated and the case dismissed. No order to show cause will be issued.

Based upon the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that Respondent United States of America's Amended Motion to Set Aside Default, to Dismiss Civil Case, and for an Order to Show Cause [Docket No. 14] is **GRANTED IN PART and DENIED IN PART** as follows:

1. The Clerk's Entry of Default [Docket No. 10] is **VACATED**;
2. The Government's request for an order to show cause is **DENIED**; and
3. This civil case is **DISMISSED**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

s/Ann D. Montgomery
ANN D. MONTGOMERY
U.S. DISTRICT COURT

Dated: September 16, 2020